WP(C) 1020/2007
BEFORE
HON'BLE JUSTICE B.K. SHARMA

JUDGEMENT AND ORDER(ORAL)

1. Both the writ petitions are for a direction to the respondents to allow the petitioners to appear in the Class-XII examination conducted by the Central Board of Secondary Education (C.B.S.C.) which commenced w.e.f. 05.03.07 (theory). By the time, the writ petitions were filed, the practical examinations were a lready over. During the course of hearing of the writ petitions, learned counsel for the parties have submitted that the practical examinations were held on 9th , 12th and 16th of February, 2007. The written examinations (theory) were held w.e.f. 5th March, 2007 and came to an end on 28th March, 2007. Having regard to the urgency shown in the matter and as requested by the learned counsel for the parties, the writ petitions have been heard at the admission stage itself and th ey are being disposed of by this common judgment and order.

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2. In this writ petition the case as projected by the two petitioner is tha t they are the students of Class-XII of Kendriya Vidyalaya (KVS), Indian Oil Cor poration, Noonmati, Guwahati and they are going to appear in the Higher Secondar y final examination scheduled to be held from 5th March, 2007. Be it stated her e that the writ petition was filed on 1st March, 2007. As per the statements ma de in the writ petition, the Principal of the KVS has refused to part with the Admit Card meant for the petitioners. According to the petitioners since they ha ve deposited the required fees etc., the Principal of the school cannot withhold the Admit Card. In paragraph- 3 of the writ petition, a statement has been mad e that the authorities have disallowed the petitioners to sit in the practical e xamination on the plea of non-availability of the Admit Cards. Thus, the whole b asis of the claim of the petitioners in the writ petition is that the Principal of the school has illegally withdrawn the Admit Cards which resulted in their fa ilure to appear in the practical examination.

3. The writ petition was entertained on 01.03.07 and an interim order was p assed directing the respondents to issue and/or hand over the Admit Cards to the petitioners and to allow them to sit in the examinations. It was provided that such participation of the petitioners in the examination will, however, be subje ct to further orders of the Court. As regards the practical examination, since it was already over, it was provided that as to whether there should be a separa te practical examination for the petitioners, same would be decided by the Court after notice.

4. The CBSE has filed its affidavit in opposition on 27.03.07 inter alia co ntending that the list of candidates is received in the month of September in t he preceding year of examination. In the instant case also, the list was receive d from the school authority in the month of September, 2006 duly signed by the c andidates and the Principal of the school. The percentage of attendance of the regular students is counted upto to the first month of the preceding month in w hich the examination of the Board commences. Indicating the particular rule rela ting to attendance and condition thereof, it has been stated that a candidate is required to have 75% of attendance which is condonable in case of percentage of attendance between 60% and below 75%. Further relaxation below 60% is permis sible only in certain exceptional cases. In this connection, the Board has refer red to Rule 14 of the Rules.

5. On 26th April, 2007 the Board filed an additional affidavit stating inte

r alia that the petitioners in both the writ petitions have less than 6% attenda nce. Percentage of attendance indicated are 56%, 59% and 58% respectively. Acco rding to the Board since the petitioners neither submitted any medical certific ate well in time showing the details of illness nor the period of illness, atte ndance could not be condoned. The Board further stated that the Principal of the school has also not recommended the cases for condonation of shortage of attend ance.

6. The KVS has also filed its affidavit in opposition inter alia contending that the petitioners were not allowed to appear in the practical examination he ld during 1st February, 2007 to 15th February, 2007 because of their attendance below 60% as against the required attendance of 75%. According to KVS, the petit ioners neither submitted any application nor any medical certificate to cover up the period of absence. Referring to CBSE examination Bye- laws, it has been con tended that a candidate undergoing medical treatment is required to submit medic al certificate on time. According to KVS there is suppression of material fact o n the part of the petitioners.

7. The petitioners have submitted a reply affidavit wherein the scope of th e writ petition as it stood at the time of filing has been enlarged, being confr onted with the stand of the respondents that the petitioners could not be allowe d to appear in the practical and the theory examination because of lack of requi red attendance, the petitioners have stated in paragraph-3 of the reply affidavi t that they were never informed by the school authority about the lack of requir ed attendance. On 27.01.07, according to the petitioners, on being so apprised , they wanted to submit applications supported by medical certificates explainin g the period of absence, but the Principal of the school refused to accept the s ame.

8. After the aforesaid developments the practical examinations were held as per the schedule and much thereafter, the writ petitions were filed on 01.03.07 and 02.03.07 respectively praying for interim relief to allow the petitioners t o appear in the theory examinations scheduled to be held from 5th March, 2007. T he petitioners have annexed the purported copies of the medical certificates dat ed 04.12.06 to 10.05.06 which according to the petitioners were submitted to the school authorities on 07.04.07 along with the representations submitted on that day.

9. From the above stand of the petitioners what has transpired is that alth ough medical certificates dated 04.12.06 and 10.05.06 were available with the pe titioners, but the same were not submitted to the school authorities. This neces sarily leads to the question as to whether the certificates have been obtained a t a later stage just to serve the purposes. Even otherwise also the said certif icates were enclosed along with the representation made on 07.04.07 which was af ter the commencement of the theory examination in which the petitioners appeare d as per the interim order passed by this Court.

10. Unlike the first writ petition in which there is no mention about the l ack of attendance on the part of the petitioners, in the second writ petition th e petitioner has stated about lack of attendance. According to the petitioner sh e could not attend the school on certain periods because of her suffering from m ild form of Tuberculosis. She has also referred to her purported Thyroid proble ms and her suffering from fever and cough. In the writ petition there is no ment ion of the fact that the practical examinations were already over by the time th e writ petition was filed. In paragraph- 5 of the writ petition, a statement has been made that since the petitioner could not attend her classes periodically d ue to her illness and since it was not a case of continuous absenteeism for a de finite period, it was not possible on her part to produce medical certificate o

n every occasion. Thus, the petitioner has admitted that she did not submit the medical certificates relating to illness.

11. As in the first writ petition, in the second writ petition also the respondents have filed their counter affidavit urging the same ground as in the first writ petition. The percentage of attendance of the petitioner has been mentioned above. However, in view of the dispute raised by the learned counsel for the petitioner regarding the veracity of the same, learned counsel representing the KVS was directed to produce the attendance registrar. Upon consultation of the same, learned counsel for the petitioner has confirmed the position relating to attendance of the petitioner which is less than 60%.

12. As in the first writ petition, in this case also it is the definite stand of the respondents that there was no application for condonation of required percentage of attendance nor there was any medical certificate in support of the purported illness. The respondents have annexed the copy of the letter dated 16.02.07 addressed to the Board by KVS authority mentioning therein that the students named in the letter which included the petitioners also, did not submit any medical certificate relating to their treatment or hospitalization nor any application for their absence period. The respondents have also enclosed the copy of the medical certificate dated 28.02.07 certifying that the petitioner was under the treatment of the Doctor for fever and cough from May, 2006, and in August, 2006 which was diagnosed to be a case of high fever with respiratory type of infection. This certificate has also been submitted after the practical examination.

13. I have heard Mr. K.K. Mahanta, learned Sr. counsel assisted by Ms. M. Katakey, learned counsel for the petitioners in the first writ petition as well as Mr. A.M. Buzarbaruah, learned counsel appearing for the petitioner in the second writ petition. I have also heard Mr. S.C. Biswas, learned counsel representing the KVS as well as Mrs. R. Borah, learned C.G.S.C.

14. Learned counsel for the petitioners upon a reference to the respective pleadings have submitted that the respondents have not dealt with the matter taking a pragmatic approach. According to them in the fact situation of the case, the required percentage of attendance is to be condoned. In this connection, they have referred to the medical certificates about which mention has been made above.

15. Both Mrs. R. Borah, learned C.G.S.C. representing the CBSE as well as Mr. S.C. Biswas, learned counsel representing the KVS referring to the to relevant rules have submitted that there is no scope for any condonation regarding required percentage of attendance. According to them, the petitioners after remaining absent from the school and/or classes cannot take the pleas which are all after thought. Emphasizing the need to enforce the discipline in educational institutions, they have submitted that the authority cannot violate its own rules.

16. I have considered the rival submissions made by the learned counsel for the parties and also the materials on record. There is no dispute that all the petitioners are lacking in their required attendance which is 75%. As per Rule 14 of the CBSE Rules, shortage upto 15% only may be condoned by the Chairman of the CBSE. The cases of the candidates with attendance below 60% shall be considered for condonation of shortage of attendance by the Chairman, only in exceptional circumstances created on medical ground, such as candidates suffering from serious diseases like cancer, AIDS, TB or similar serious diseases requiring long period of hospitalization. Rule 14 of the Rules is quoted below:

14 (ii) Shortage up to 15% only may be condoned by the Chairman. Cases of candidates with attendance below 60% in class X or class XII, as the case may be, shall be considered for condonation of shortage of attendance by the Chairman only

in exceptional circumstances created on medical grounds, such as candidate suffering from serious diseases like cancer, AIDS, TB or similar serious diseases requiring long period of hospitalization.

17. In the instance case, it is an admitted position that all the petitioners did not have the required attendance and they are even below condonable percentage of attendance. They being in the category of below 60%, the shortage can be condoned by the Chairman of the Board only as an exception crated on medical ground as indicated in Rule 14(ii) of the Rules framed by the Board. Apart from the fact that the purported ailments which the petitioner have indicated are not the kind of serious diseases as indicated in Rule 14 (ii), the petitioners also did not submit any application nor any medical certificate justifying their absence in the school/classes. Learned counsel for the petitioners have strenuously argued that both the petitioners wanted to submit such certificates and applications, but the Principal of the school refused to accept the same. They have also submitted that the petitioners were given the indication that their lack of attendance would be condoned and that they did not worry.

18. There is no materials on record to support such contention of the petitioners. While in the first writ petition there is no whisper regarding lack of attendance of the petitioners on ground of illness, in the second writ petition although the petitioner has indicated about her illness but admittedly she did not submit any application nor any medical certificate in support of her such illness. In the first writ petition, the petitioners have tired to develop their cases by filing further affidavits, even making a mention about their approach to school authority on 27.01.07 regarding lack of required percentage of attendance. It has been stated that they visited the school authority from 29.01.07 to 05.02.07 seeking permission to submit applications along with medical certificates towards condonation of required percentage of attendance. Thus the petitioners were aware that they were lacking in their attendance. However, nothing has been stated in the writ petition. Only statement made is that the Principal of the school has illegally withheld the Admit Cards. In the writ petition there is no mention about any illness, medical certificates and the fact that the petitioners were aware that they lacked required attendance. With such withholding of relevant fact, the petitioners obtained an interim order dated 01.03.07 on the strength of which they appeared in the theory papers.

19. In the second writ petition also there is no mention of the practical examination which was already over by the time the writ petition was filed. Both the learned counsel for the petitioners referring to the interim order passed have submitted that the fact of holding of the practical examination was made known to the Court. But on perusal of the interim order what is seen is that the same was passed in reference to the earlier interim order dated 28.02.07 passed in another writ petition being W.P.(C) No. 996/07. All these give rise to the probable conclusion that the petitioners have not approached this Court with clean hands. However, the petitioners are not being deprived of their remedy, if available, on this ground.

20. The impugned action on the part of the respondents cannot be said to be contrary to the fact situation involved in this case, and/or in violation of the rules. Rather such action is based on rules governing the conduct of the examination. The writ court exercising its power under Article 226 cannot issue any mandamus to the CBSE to violate their own rules.

21. During the course of hearing learned counsel for the parties have submitted that their applications along with the medical certificates are still pending with the CBSE authority. However, Ms. R. Borah, learned C.G.S.C. has submitted that pursuant to the order passed by this Court, the cases of the petitioners have once again been considered by the authority and in absence of any justifiable ground, same has been rejected.

22. In view of the above, while refusing to grant any relief to the petitioners exercising the writ jurisdiction, the matter is left open for the respondents for further decision, if so advised. It will be open for the respondents to consider the case of the petitioners within the limits of the rules taking into account any such materials which may be relevant for the purpose facilitating the same. The petitioners may approach the appropriate authority and in the event of making such approach, the said authority will be at liberty to review the decision in accordance with law.

23. This observation shall not be considered to be a direction to the authority to act in a particular manner. What is provided is that dismissal of the writ petitions shall not preclude the concerned authority to take a fresh decision in the matter, if so advised and permissible in the fact situation and under the rules.

24. The very first page of the student diary on which the learned counsel for the petitioners has placed reliance, reminds the students of the following.
Remember children A good and laudable performance demands and deserves your constant & sincere participation in the process of learning. To ignore it would amount to denying yourself the thrills of experience and joys of achievements .